

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA  
EX REL ROBERT C. BAKER,

Plaintiffs,

v.

05 CV 279 WJ WDS

COMMUNITY HEALTH SYSTEMS, INC.,  
ROSWELL HOSPITAL CORPORATION  
d/b/a EASTERN NEW MEXICO MEDICAL  
CENTER; DEMING HOSPITAL CORPORATION  
d/b/a MIMBRES MEMORIAL HOSPITAL AND  
NURSING HOME; and SAN MIGUEL HOSPITAL  
CORPORATION d/b/a ALTA VISTA REGIONAL  
HOSPITAL,

Defendants.

**MINUTE ORDER RESOLVING QUESTIONS ON PROPOSED  
ORDER RE: DEFENDANTS' CROSS MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS AND ELECTRONICALLY STORED  
INFORMATION**

This matter is before the Court at the request of the parties. On February 8, 2011 the Court heard oral argument on a number of discovery motions. At the conclusion of oral argument the Court directed the parties to submit proposed forms of orders in accordance with the Court's rulings. The parties were unable to come to an agreement on the content of the proposed orders. The parties have submitted a proposed form of order on Defendants' cross motion to compel, and where they were unable to agree on the language of the order they have supplied their competing versions of proposed text. Since several issues have caused objections in many paragraphs, the Court will address those issues, rather than the individual paragraphs.

A. "UPL" program or "sole community provider type programs": It is the Court's understanding that UPL programs not only involve hospitals, but also facilities engaged in nursing,

drug treatment, child care, etc. This case is about hospitals making “voluntary” contributions resulting in reimbursement under a program that New Mexico has entitled SCPF or SCHSP . The defendants are entitled to discovery from CMS regarding similarly situated hospitals in other states, regardless of the title of the program. Defendants are not entitled, at this time, to discovery regarding other UPL facilities that are not hospitals.

B. “General Overview”: Defendants’ discovery from CMS is not limited to a “general overview” although Defendants are entitled to depose a particular witness for the purpose of obtaining a general overview.

C. Privilege Claims: Any documents that a party intends to withhold from production on the grounds of privilege need to be documented in a privilege log that complies with the requirements of the Federal Rules of Civil Procedure. Once that is done and the parties have met and conferred in an attempt to resolve their differences, the Court will consider a motion to uphold or strike the privilege.

D. Health Care Related Tax: Defendants are entitled to discovery relating to “health care related tax” to the extent that such discovery is relevant to issues that are present in this case, i.e., the application of such statutes to private hospitals making “voluntary” contributions that result, or are intended to result in, federal reimbursement.

IT IS SO ORDERED



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W. Daniel Schneider  
United States Magistrate Judge